

**High Court of Karnataka**

**Income Tax Appeal No. 31 of 2013**

**THE COMMISSIONER OF INCOME TAX .... Appellant  
versus  
M/S IBM INDIA PVT LTD .... Respondent**

Honble Justice D.V.SHYLENDRA KUMAR AND B.SREENIVASE GOWDA

04/02/2013

The respondent-Assessee has filed IA II/2013 for vacating the interim order granted by this Court on 29.01.2013 staying the impugned order of the Tribunal questioned in this appeal.

2. We have heard the submission of learned Counsel on both sides at length on the application for vacating the stay. We also notice the Assessee had filed a memo dated 01.02.2013 annexing the letter dated 31.01.2013 issued by the Joint Commissioner of Income Tax addressed to the Assessee and given certain proposals and a prayer was made that the appeal may be disposed of as not necessary in view of the developments taken place subsequently with a direction to dispose of the appeal expeditiously.

3. Sri S.S. Naganand, learned Senior Counsel mainly urged that in the first instance the appeal is not tenable as the same is filed under Section 260 A of the Income Tax Act (for short "the Act") directed against an interim order passed by the Tribunal during the pendency of the main appeal before it. Reliance is placed on an earlier Division Bench decision of this Court rendered under the Customs Act and the provisions of the Act relating to filing of appeal under section 260 A of I.T. Act is similar to that in the corresponding section in the Customs Act etc.,

4. On merit it is pointed out that when the very draft assessment as proposed by the Assessing Officer indicated the payable tax demand at Rs.667,83,26,618/- the demand as per the final assessment order got enhanced to Rs.1090,39,59,754/-. It is submitted that without any corresponding direction from the Dispute Resolution Panel (DRP) to whom it was referred to at the instance of the Assessee, the Assessing Officer can not enhance the demand, and to demand payment of an amount higher than the proposed demand and secondly it is pointed out that the Assessing Officer is not at all justified in

disallowing the benefit claimed under Section 10A and 10AA of the Act and this order is per se bad in law and therefore such disallowance cannot be sustained. It is submitted that the credit towards TDS which had been at a higher figure of Rs.179,24,25,070 has come to be reduced to Rs.126,22,29,214 and thus on the face of the record it is not tenable.

5. It is also urged that many disputed issues were also covered in favour of the Assessee as per the earlier decisions of the Tribunal or the High Court. It is only after examining all these things the Tribunal directed the Assessee to deposit a sum of Rs.50 crores as against the demand of Rs.1090,39,59,754 etc., and the proper view taken by the Tribunal and therefore does not warrant interference in this appeal etc.

6. On the other hand, the contention of learned Counsel appearing for the Appellant-Revenue is that the Tribunal in fact has not examined the financial hardship nor any financial hardship is pleaded by the Assessee before the Tribunal or before this Court, the Tribunal has not examined the balance of inconvenience put in favour of the Assessee rather than in favour of the Revenue and more importantly no prima facie case has been made out before the Tribunal as reflected in the impugned order of the Tribunal with regard to the difference in TDS figures in the proposal and final order, it is submitted that the revised figure is purely based on NSDL/AST, credit, which is the correct figure, whereas earlier it was not so etc.

7. In so far as the argument relating to claim for deduction, the said fact was examined by the DRP. The DRP in fact has issued directions for redoing the assessment in the light of the material placed by the Assessee before the DRP and it is on the very material that the Assessing Officer examined the same and therefore the claim for deduction is not justified. It is also submitted that the Assessee had not placed material before the Assessing Officer but only before the DRP and the DRP on evaluation has made addition and directed the Assessing Officer to complete assessment; that the Assessing Officer has only given effect to the direction issued under Section 144C(5) of the Act, by the DRP and therefore no exception can be taken to the figures as indicated in the final assessment order.

8. So far as maintainability of the appeal is concerned it could be considered at the time of disposal of the main appeal.

9. In so far as the submission regarding modification of Interim order is concerned in the first instance we find the Tribunal has granted interim order

and it is because of gross disproportionating of the amount to be deposited as against the demand such order prima face being per say a perverse order this appeal is admitted, to consider the question of law as indicated earlier, at that time.

10. Submission made at the Bar in favour of the Assessee by Sri Naganand, learned Senior Counsel that the Assessee has already paid almost 50% of the amount determined by the Tribunal etc., we do not want to record any finding on that, but prima facie we are satisfied that there a plausible explanation given on behalf of the Revenue, with reference to grounds of the appeal and contentions put forth on behalf of the Assessee.

11. In this view of matter we find in a matter involving large amounts due to the Revenue, granting interim order candidly be only in case of financial hardship of the Assessee where it is genuine and not otherwise as per the view taken by the Apex Court particularly in tax matters.

12. In this appeal it is noticed that the Assessee has in fact after interim order granted by this Court has approached the Revenue and there are certain proposals given by the Revenue to the Assessee and it is submitted by Sri Naganand, learned Senior Counsel that initially the Assessee has deposited Rs.50 crores and as per the order of the Tribunal and further a sum of Rs.175 crores has been deposited after the order passed by this court and a sum of Rs.25 crores will be deposited by 10.02.2013 and modification of interim order to such extent should take care of the interest of both the Assessee and Revenue etc.

13. Normally in money matters whenever it is appealed against even in respect of a private parties the present norm is 50% to be deposited and for balance of 50% security to be given to the satisfaction of the decree holder i.e., the Revenue in the present case.

14. In view of the fact that the Revenue itself has made offer to the Assessee for making deposit of 50% of the demanded amount, we modify the interim order in respect of stay granted earlier to the effect that the order of the Tribunal stands modified to the extent of said order of stay of enforcement of the demand will enure to the benefit of the Assessee on depositing 50% of the demanded amount and for the balance amount we do not direct furnishing of any security though it is a normal rule, as the revenue itself had offered to the Assessee to keep in abeyance enforcement of the balance amount for sometime awaiting the final order before the Tribunal etc.

15. This order is on the application for vacating the stay order granted earlier. It is open for the Assessee to deposit the balance 50% of the demanded amount on or before 31st March, 2013.

16. The Tribunal may be moved to dispose the appeal pending before it expeditiously.